

Unit Overview

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4.1 Unit Instructions — Scope and Objectives

A. Instructions

- 1) Read the entire unit.
- 2) Complete the review and instructional activities in Section 4.8, and check your answers using the answer key in Section 4.9.
- 3) Complete the unit evaluation form.

B. Scope and Objectives

As noted in the preceding units, a driver cited for a traffic civil infraction may admit responsibility (with or without explanation) or deny responsibility. Cited drivers may also fail to respond to the citation at all, in which case they are subject to a default judgment.

This unit (as well as Unit 5) will address court procedures in cases where the defendant denies responsibility for a traffic civil infraction. This unit will also address situations where a cited driver defaults and/or fails to comply with a judgment of responsibility entered by the court.

After completing this unit, you will be able to:

- Distinguish between formal and informal hearings in traffic civil infraction cases;
- Determine the necessity for an informal hearing;
- Identify the nine steps used to conduct informal hearings; and,
- Process cases involving default judgments and noncompliance with a judgment.

4.2 Distinguishing Formal and Informal Hearings

*See Section 5.2(A) regarding the preponderance of the evidence standard.

A case involving a defendant who denies responsibility for a traffic civil infraction may be adjudicated at a formal or informal hearing. Most contested traffic cases are heard and decided at informal hearings. A formal hearing occurs when the defendant expressly requests one, or when a party appeals a decision rendered after an informal hearing. MCR 4.101(E)(2)(a) and (G)(2).

Under MCL 257.747, formal hearings in traffic civil infraction cases must be conducted by the district judge. The judge decides whether to find the defendant responsible for the infraction, applying a preponderance of the evidence standard.* Each party may be represented by an attorney, but the defendant is not entitled to appointed counsel at public expense. There is no jury at a formal hearing.

Under MCL 257.746, informal hearings in traffic civil infraction cases may be conducted by a district judge or a district court magistrate. Before conducting an informal hearing, however, the magistrate must receive judicial authorization to do so and complete a traffic adjudication course in accordance with MCL 600.8512(2)-(3).

An informal hearing is similar to a formal hearing in that no jury is empaneled; also as in a formal hearing, a preponderance of the evidence standard is used to decide whether to find the defendant responsible. The procedural rules applicable to a formal hearing do not pertain to an informal hearing, however. Except with regard to privileged communications (such as the attorney-client or doctor-patient privilege), the magistrate is not bound to follow procedural rules such as the Michigan Rules of Evidence, and no verbatim record is required. Neither party may be represented by an attorney at an informal hearing. MCL 257.746(1)-(4).

In general, the atmosphere surrounding the informal hearing allows for greater latitude to parties and witnesses. Nonetheless, the magistrate should keep in mind that informal traffic hearings are many citizens' only experience with the court system. A traffic case that seems routine to a magistrate may be a matter of great concern to the person who has requested a hearing. It is thus important that the magistrate control the proceedings and treat both parties fairly, with courtesy and respect, no matter how routine the case may seem to the magistrate. Magistrates must also seek to make informal hearings understandable to those who appear and to provide reasons for their decisions.

4.3 Conducting Informal Hearings

*No rule bans or requires the use of a robe by a magistrate. However, magistrates may want to first consult with their chief judges.

During an informal hearing, the magistrate should maintain a dignified and judicial environment. The magistrate should wear standard business attire or a judicial robe* and eliminate personal items from the hearing room, such as family pictures. The ideal hearing room should contain the following items:

- A work area for parties and witnesses that includes a calendar and a magnetic board with model cars or chalkboard and writing implements;

- A seating area for parties and witnesses;
- Separate seating areas for spectators and for parties awaiting scheduled hearings;
- A raised bench for the magistrate;
- The United States and Michigan state flags, and a Michigan state seal; and,
- A copy of the Michigan Vehicle Code and municipal traffic ordinances.

The magistrate may want to develop an informal hearing information sheet and send it to defendants who have a hearing scheduled. Such a sheet would contain information to help defendants understand what to expect at their hearings. A sample information sheet is found in the Reference Section. This document was adapted from material developed by several district courts.

The magistrate has a duty to maintain control over the proceedings during an informal hearing. Following the steps outlined in this section will assist the magistrate in maintaining control and will help to insure that the hearing is conducted fairly. The Reference Section contains further materials to help magistrates properly conduct informal hearings, including a checklist of the proceedings and a script containing recommended language for the magistrate to use during a hearing.

A. Examine the Case File

The first step in conducting an informal hearing is to examine the case file and determine whether it is complete.*

The file should contain the following items:

- The citation.
- A copy of Form CIA 01, *Notice to Appear*, that corresponds to the citation for the case. (Court personnel should have sent this notice to each party in advance.)
- A copy of Form CIA 02, *Judgment*.*

In addition, the case file may contain:

- A copy of the defendant's driving record. (To avoid prejudice, the driving record should not be reviewed before the hearing.)
- A copy of the police accident report.* (To avoid prejudice, the accident report should not be reviewed before the hearing.)

After examining the file for completeness, the magistrate should check for material defects in the citation. See Section 3.4(B)(3) on material defects.

Finally, the magistrate should determine the elements of the alleged infraction that the police officer must prove by a preponderance of the evidence to support a finding of responsibility.* During the parties' testimony, it is helpful for the magistrate to take notes that document testimony related to each

*See also Section 3.4(B)(2).

*See the Reference Section for Forms CIA 01 and CIA 02.

*Accident reports are inadmissible in courts or other tribunals. MCL 257.624(2).

*See Section 5.2 on establishing the elements of an offense.

element of the offense. These notes may then be used to find that a preponderance of the evidence establishes that an offense was committed. (See the Informal Hearing Worksheet in the Reference Section.)

B. Call the Case

The informal hearing begins when the magistrate calls the case. The defendant will appear in person, and the plaintiff (the State of Michigan, a city, village, or township) will be represented by a police officer.

To verify that all persons connected with the case are present at the hearing, the magistrate should ask the officer, defendant, and any witnesses who are present to please step forward.

If the defendant fails to appear, the magistrate should enter a default judgment. If the citing officer fails to appear, the magistrate may either adjourn (i.e., postpone) the case or dismiss the citation.*

Note: Magistrates should not socialize with police officers anywhere in view of the public before the start of a scheduled hearing. Parties who perceive that the magistrate has a social relationship with the officer may also perceive that the magistrate's decision will be biased in the officer's favor.

C. Explain the Proceeding

Once the magistrate is satisfied that the parties and witnesses are present, the magistrate should introduce himself or herself and identify the defendant and officer. The magistrate should next tell all present, in plain English, what will happen. Some of the items to be explained include the following:

- The proceeding is an informal hearing.
- The purpose of an informal hearing is to determine whether the defendant is responsible for a traffic civil infraction.
- Each side will have the opportunity to be heard.
- After the citing officer has testified, the defendant will testify about the facts relating to the incident and offer a defense.
- The magistrate will decide the case after hearing all relevant testimony and applying the appropriate traffic law.
- A preponderance or majority of the evidence is required to find the defendant responsible.*
- The possible civil sanctions include a civil fine, costs, statutory assessments, and perhaps alternate sentencing such as treatment, education, or rehabilitation. A jail sentence is not a possible sanction.
- Either party may appeal if dissatisfied with the magistrate's decision.

*See Section 4.5 on "no shows."

*See Section 5.2(A) on preponderance of the evidence.

D. Read the Traffic Complaint

After explaining what an informal hearing is, the magistrate should read the complaint information aloud, exactly as it appears on the citation, including:

- The citation number;
- The name of the defendant;
- The date and time of the alleged incident; and,
- The location and description of the alleged offense.

Note: The defendant may allege at this point that there is an error in the citation. Many defendants believe that any error in the citation makes the citation invalid, no matter how minor the error is. The magistrate (who would have checked the citation for material defects prior to the hearing) should explain that the only defects affecting the validity of a citation are material defects going to the essence of the charge.*

*See Section 3.4(B)(3) on material defects.

Next, the magistrate should read the applicable statute or ordinance. The magistrate must be satisfied that the defendant understands the charge and confirm that the defendant denies responsibility. Often, defendants belatedly realize that they committed the infraction and may admit responsibility. If this happens, the magistrate need not hear testimony because the proceeding becomes either an admission of responsibility or admission with explanation. The magistrate may dismiss any witnesses and the citing officer and proceed to enter judgment with just the defendant present.*

*As a matter of courtesy, some magistrates allow the witnesses to be heard from before they are dismissed.

If the defendant still wishes to deny responsibility, the magistrate should ask the parties if they are ready to proceed with the hearing.

E. Administer the Oath

Before taking testimony, the magistrate must administer the oath to the parties and witnesses. The parties and witnesses may take the oath as a group. The magistrate instructs the group to stand and raise their right hands while the oath is administered. The magistrate should then ask all present to be seated.

F. Take Evidence

The magistrate may begin by asking the citing officer to present the evidence in support of his or her case. The officer's evidence may be in the form of verbal testimony, physical evidence (such as skid mark measurements), or documents (such as photographs). The officer's evidence should be confined to facts relevant to the elements of the offense.* Testimony about the defendant's attitude toward the officer, for example, is not relevant to the elements of most civil infractions and should be prohibited. After the officer has finished presenting evidence, the magistrate may ask the officer questions to clarify elements of the alleged infraction.

*See also Sections 5.2-5.3.

Once the officer's presentation is concluded, the magistrate should ask the defendant if he or she has any questions for the officer or the officer's witnesses. The defendant must not be allowed to argue with the officer. To maintain control of the proceedings, the magistrate should tell the defendant

to direct questions to the magistrate who will, in turn, conduct the actual questioning of the officer or the witnesses. The magistrate must insure that the defendant's questions are relevant and not argumentative. The magistrate may wish to remind the parties that courtroom etiquette applies, even though the hearing is informal.

Next, the magistrate should ask the defendant to present his or her case. Like the officer, the defendant may present verbal testimony, physical evidence, or documents. The defendant is probably less experienced in testifying than a police officer so his or her evidence is more likely to be disorganized, unfocused, or irrelevant to the main issues of the case. The magistrate will often need to question the defendant after his or her presentation. The magistrate should be sensitive to the defendant's inexperience and make every effort to maintain an atmosphere of dignity, decorum, and impartiality. At the end of the defendant's presentation, the magistrate should ask whether the officer has any questions for the magistrate to ask the defendant or the defendant's witnesses. To avoid arguments arising between the defendant and the officer, the officer's questions should be directed to the magistrate, who in turn will question the defendant. If the magistrate still requires more facts to decide the case after hearing the testimony, he or she should question the parties.

G. Decide the Case

After hearing the testimony and asking questions, the magistrate should assess whether each element of the officer's case has been established by a preponderance of the evidence and reach a decision.* In announcing his or her decision, the magistrate should:

- Recite the facts not in dispute;
- Explain how he or she has resolved the disputed facts;
- Apply the facts to the appropriate traffic law;
- Announce whether or not the defendant is responsible for the infraction; and,
- Give reasons for the decision.

H. Impose Sanctions

A magistrate who finds a defendant not responsible should dismiss the defendant and anyone else who is still in the hearing room.

A magistrate who finds the defendant responsible must impose civil sanctions immediately. Since sanctioning is a matter that concerns only the magistrate and the defendant, the officer and any witnesses may be excused for this stage of the hearing if they wish to leave. If the officer or witnesses remain in the hearing room while the magistrate imposes sanctions, they should be advised that they have no opportunity to argue the sanction once it is imposed. The officer has no right to contest the sanction.

*See Sections 5.2-5.3 for more on the reasoning process involved in deciding a case.

The defendant's driving record, if available, may be reviewed at this time. The magistrate may consider the defendant's current driving record and any aggravating or mitigating circumstances in imposing civil sanctions. For civil infractions listed on the fine schedule, a magistrate may not impose a fine greater than the amount listed on the fine schedule. A magistrate may impose other sanctions, such as driving school and other rehabilitation programs.*

*See Section 2.5 on sanctions.

Whatever sanctions are imposed, the magistrate should advise the defendant that failure to pay fines, costs, and assessments, or to complete a rehabilitation or service program, may result in a misdemeanor conviction, possible suspension of one's driver's license, and even punishment for contempt of court. See Section 4.6 on the consequences of noncompliance with a judgment.

Note: If asked about points on the driving record, the magistrate should advise defendants that points are assessed by Secretary of State (*not* the district court) after the Secretary of State receives notice that a driver has been found responsible for a civil infraction. A magistrate may not adjust the number of points assessed. See Section 2.5(A).

I. Complete Case Processing

After deciding the case, the magistrate should ensure that Form CIA 02, *Judgment*, is completed, with a copy given to the defendant and the original filed with the court. The magistrate's involvement in the case ends when the defendant is dismissed from the hearing room.

Once the day's proceedings are concluded, all case files should be returned to the court clerk. If a magistrate so desires, he or she can keep a record of daily and quarterly activities on SCAO Form DC 21, *Magistrate's Daily Report*, and on DC 22, *Magistrate's Quarterly Report*.

Note: Daily and quarterly reporting on SCAO Forms DC 21 and 22 are no longer required under MCR 8.205(A)(2), a rule deleted in 1999. However, magistrates may still be required by their chief judges to keep track of their daily and quarterly activities, or they may voluntarily choose to do so. For these reasons, copies of SCAO Forms DC 21 and 22 are provided in the Reference Section.

The court clerk is responsible for preparing judgment abstracts and sending Form DS1-22, *Abstract of Conviction*, to the Secretary of State.*

*See Section 2.5(A) on judgments that must be abstracted.

4.4 Appeals

Either party who is dissatisfied with the magistrate's decision after an informal hearing may appeal the decision and have the case reheard at a formal hearing before a district judge.* The formal hearing on appeal is held *de novo*, meaning that the judge will hear the case as if for the first time. No consideration will be given to evidence or testimony from the informal hearing. MCR 4.101(G)(2).

*See also Sections 1.5(A), 2.4(D).

*Form CIA 05
is in the
Reference
Section.

The party appealing must request an appeal in writing within seven days of the magistrate's judgment on Form CIA 05, *Claim of Appeal of Right*.^{*} A defendant who appeals must post an appeal bond equal to the fine, costs, and assessments imposed at the time the appeal is taken. MCR 4.101(G)(2)(a). A plaintiff's appeal must be authorized in writing by the prosecutor; no bond is required, however. MCR 4.101(G)(2)(b).

4.5 Default Judgments

*See Section
2.5 on
sanctions.

If a defendant fails to respond to a traffic citation or to appear for a scheduled hearing, the magistrate must enter a **default** determination of responsibility and impose appropriate sanctions. MCL 257.748, MCR 4.101(B)(4) and (E)(4).^{*}

*See Section
4.6(A)-(B).

Failure to answer a citation or a notice to appear in court for a traffic violation can also result in license suspension. Moreover, such failure is a misdemeanor. MCL 257.321a(1)-(2). The district judge and/or prosecuting attorney (but not the magistrate) will decide whether to prosecute the defendant for this misdemeanor offense.^{*}

When the defendant fails to appear for a scheduled hearing, the magistrate should dismiss the citing officer and any witnesses who appeared. Before dismissing these persons, it is good practice to explain what procedures the court will follow against the defendant who is in default.

Note: Magistrates inevitably face the question of what to do about “no-shows.” Defendants and police officers may arrive late or fail to appear at a scheduled informal hearing. Therefore, the magistrate should consult with the district judge to develop a clear, no-exceptions policy under which parties who arrive more than a given number of minutes late are considered no-shows. When one party appears and the other one does not, the magistrate should advise those present of the time by which the absent party must appear.

Upon entry of a default judgment, the magistrate should turn the court file over to the court employees who are responsible for sending the defendant the notices required by law and for processing the necessary paperwork.

In some instances, a defendant may have a legitimate excuse for failing to answer the citation or attend the hearing. Under MCR 4.101(C)(1), the defendant may ask the court to have the default judgment set aside. The defendant's request must be made within 14 days of the day on which the court sends the notice of default. The request may either be in writing or presented to the court in person and must explain the reason for the defendant's failure to appear. In addition, the request must state that the defendant wants to offer a defense to or explanation of the complaint and be accompanied by a cash bond equal to the fine and costs due when the motion was filed.

Note: A defendant may request that a default be set aside on SCAO Form CIA 04, *Motion to Set Aside Default Judgment and Order*, in the

Reference Section. A flow chart for setting aside a default judgment is also found in the Reference Section.

Once the defendant has filed a timely request to have the default set aside, the court, for “good cause” shown, may schedule a hearing on the defendant’s request, under MCR 4.101(C)(2)(b). Alternatively, the court may set the default aside “for good cause” under MCR 4.101(C)(2)(a). If the judgment is set aside, a hearing on the charges should be scheduled. The magistrate should meet with his or her district judge to reach an understanding of what constitutes “good cause” under the court rule.

An untimely request to set aside a default must comply with additional requirements set forth in MCR 2.603(D). MCR 4.101(C)(3). Defendants may wish to seek legal advice to determine whether they are able to meet the additional requirements of this court rule.

4.6 Failure to Appear in Court or to Comply with a Judgment

This section addresses defendants who fail to appear in court or to comply with judgments or orders of a court. MCL 257.321a contains criminal penalties and licensing sanctions for such defendants. MCL 257.907(10)-(11) set forth civil actions that may be taken against defendants who fail to pay a judgment.

Note: For an overview of the procedures the court may use when the defendant does not comply with a judgment, see the chart in Section 4.7.

A. Misdemeanor Penalties

MCL 257.321a(1) imposes misdemeanor penalties of up to 93 days imprisonment and/or a maximum \$100 fine for the following:

- Failure to answer a citation or a notice to appear in court for a violation reportable to the Secretary of State under MCL 257.732 or a local ordinance substantially corresponding to a violation that is reportable under Vehicle Code §732.*
- Failure to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, fees, and assessments.

*See Section 2.5(A) on violations reportable under Vehicle Code §732.

B. Licensing Sanctions

In addition to misdemeanor penalties, license suspension can result from a defendant’s failure to answer a citation or notice to appear in court or failure to comply with a judgment as described in MCL 257.321a(1). Under MCL 257.321a(2)-(4), the court must notify a defendant that license suspension may result from his or her inaction. If the defendant does not appear or comply with the court’s order or judgment within a stated time after receiving notice from the court, the court must report this failure to the Secretary of

*See Section 2.5(A) on violations reportable under Vehicle Code §732.

State. Upon receipt of the report from the court, the Secretary of State will suspend the defendant's license five days after written notice is mailed by the Secretary of State to the defendant. MCL 257.321a(3)-(4), 257.212. The time requirements contained in the court's notices differ depending upon the charges brought against the defendant.

In **most cases** involving noncompliance with a judgment or failure to appear for a violation reportable under MCL 257.732,* the court must mail notice to the defendant's last known address 28 days or more after the defendant fails to appear in court or to comply with a court order or judgment. (See Form CIA 03, *14 Day Notice*, in the Reference Section.) The notice shall state that the defendant's license will be suspended if he or she fails to appear or to comply with the court's order or judgment within 14 days of issuance of the notice. If the defendant fails to comply with this notice, the court must notify the Secretary of State within 14 days. The Secretary of State will then suspend the defendant's license five days after written notice is mailed by the Secretary of State to the defendant. MCL 257.321a(2), 257.212.

If a defendant charged with certain **drunk driving** or **alcohol-related offenses** fails to appear in court or to comply with a judgment, the notice from the court must be sent immediately by first-class mail to the defendant's last known address. The notice shall state that the defendant's license will be suspended if he or she fails to appear within seven days of issuance of the notice, or fails to comply with the court's order or judgment within 14 days of issuance of the notice. If the defendant fails to comply with this notice, the court must immediately notify the Secretary of State, which will suspend the defendant's license five days after notice is mailed by the Secretary of State to the defendant. MCL 257.321a(3)-(4), 257.212. The offenses to which these seven- and 14-day time requirements apply are listed below.

MCL 257.321a(3) lists the following offenses:

- OUIL/OUID/UBAC under Vehicle Code §625(1), or a local ordinance substantially corresponding to this section.
- Knowingly permitting a person who is under the influence of alcoholic liquor and/or a controlled substance to drive, under Vehicle Code §625(2), or a local ordinance substantially corresponding to this section.
- OWI, under Vehicle Code §625(3), or a local ordinance substantially corresponding to this section.
- OUIL/OUID/UBAC/OWI causing death or serious impairment of a body function, under Vehicle Code §625(4)-(5).
- Zero tolerance violations under Vehicle Code §625(6), or a local ordinance substantially corresponding to this section.
- Child endangerment under Vehicle Code §625(7).

These offenses are listed in MCL 257.321a(4):

- Transporting or possessing alcoholic liquor in open container under Vehicle Code §624a, or a local ordinance substantially corresponding to this section.
- Transporting or possessing alcoholic liquor in a motor vehicle by a person under 21 years old, unless required by the person's employment, under Vehicle Code §624b, or a local ordinance substantially corresponding to this section.
- Purchase, consumption, or possession of alcoholic liquor by a person under age 21 under MCL 436.1703, or a local ordinance substantially corresponding to this section.

Under MCL 257.321a(5),* a license suspension imposed for failure to appear or noncompliance with a judgment will remain in effect until both of the following occur:

- The Secretary of State is notified by each court in which the defendant failed to answer a citation or notice to appear or failed to pay a fine or cost that the defendant has answered the citation or notice to appear or paid the fine or cost; and,
- The defendant has paid the court a \$45 driver's license clearance fee* for each failure to answer a citation or to pay a fine or cost.

Under MCL 257.321a(6), the court shall *not* inform the Secretary of State to suspend a defendant's driver's license for failure to appear or to comply with a judgment involving:

- The parking or standing of a vehicle; or,
- A pedestrian, passenger, or bicycle violation, other than the following violations: (1) purchase, consumption, or possession of alcoholic liquor by a person under age 21 (MCL 436.1703); (2) transporting or possessing alcoholic liquor in open container, (MCL 257.624a); and (3) transporting or possessing alcoholic liquor in a motor vehicle by a person under 21 years old, unless required by the person's employment (MCL 257.624b).

In cases where the defendant has failed to answer two or more parking citations pertaining to parking for persons with disabilities, or six or more illegal parking citations, the court shall give ten days notice to appear. If the defendant fails to appear in response to the ten day notice, the court will inform the Secretary of State. MCL 257.321a(7). Upon receipt of such information from the court, the Secretary of State will not issue a license to the defendant or renew the defendant's license until the court informs the Secretary that the defendant has resolved the citations and paid a \$45 driver's license clearance fee.* MCL 257.321a(8).

C. Contempt of Court Proceedings

In addition to license suspension under MCL 257.321a, a person who fails to comply with an order or judgment of a court may be subject to civil contempt of court proceedings under MCL 257.908. MCL 257.907(11). This decision

*The provisions of §321a(5) only apply to suspensions imposed under §321a(2) or (3). The statute does not mention suspensions under §321a(4).

*Effective January 1, 2003, the fee was increased from \$25 to \$45. 2002 PA 741.

*Effective January 1, 2003, the fee was increased from \$25 to \$45. 2002 PA 741.

is made by the district judge and not the magistrate. The prosecutor may also request contempt proceedings against the defendant.

Civil contempt proceedings begin when the court sends the defendant Form CIA 06, *Order to Show Cause*. (See the Reference Section). If the defendant fails to appear, or if the judge finds that the defendant intentionally refused to obey the court order, the judge may jail the defendant until the matter is resolved.

D. Civil Process to Collect Judgment

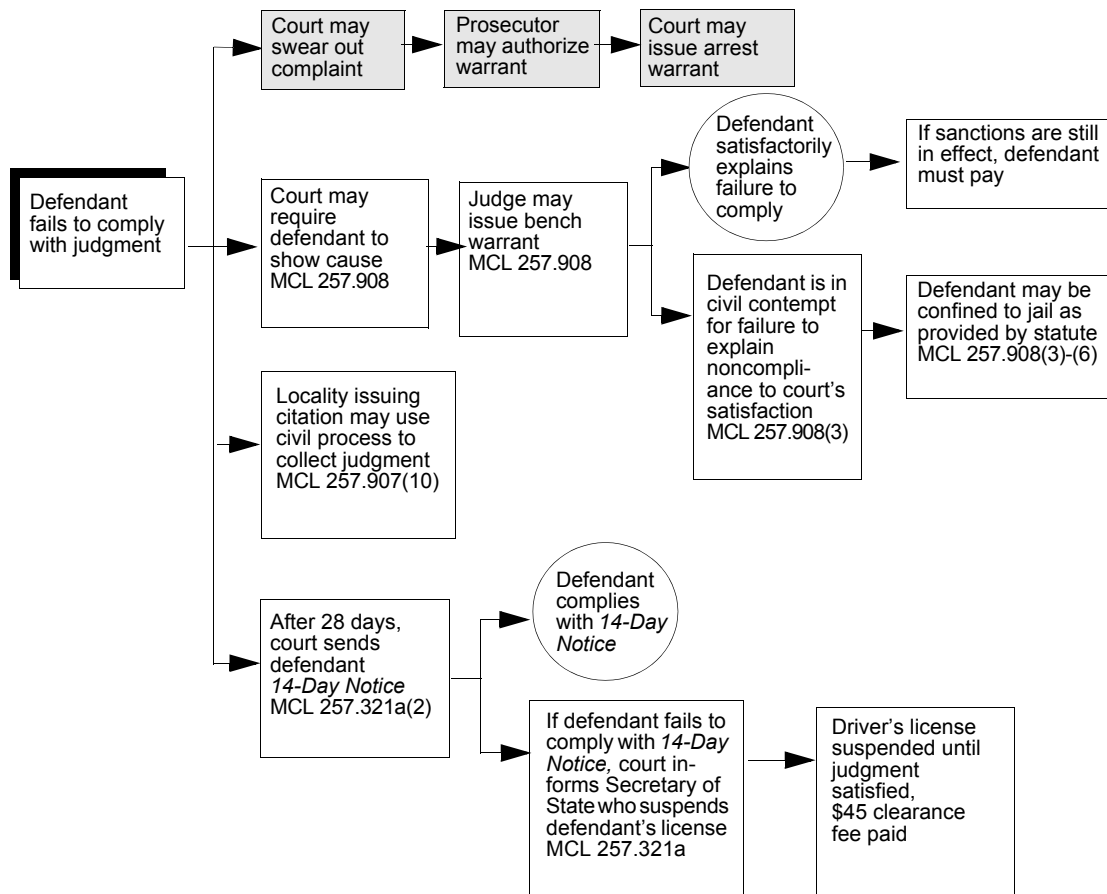
MCL 257.907(10) authorizes the state or locality that issued a citation to collect the judgment using the civil remedies in MCL 600.4001-600.4065, MCL 600.6001-600.6098. The magistrate does not make the decision to use these remedies. Among these remedies are:

- Garnishment of wages;
- Attachment of property; and,
- Levy and execution.

To collect judgments that are 180 days or more in arrears, the district court and its funding unit may enter into an agreement with the Department of Treasury under MCL 12.131-12.139, assigning delinquent accounts to the Department of Treasury for collection. The Department will collect the amount owed by offsetting tax refunds or other payments due from the state to the defendant.

Note: Under MCL 600.4803, a defendant who fails to pay a judgment within 56 days after it is due is subject to a late penalty equal to 20% of the amount owed.

4.7 Chart — Court Responses to Defendant's Noncompliance with Judgment



= **Criminal Sanctions** (Procedure under MCL 257.321a(1))
 = **Civil Sanctions** (Procedures under MCL 257.907(10)-(11))



4.8 Review/Instructional Activities

The Answer Key is found in Section 4.9.

A. Questions

Question #1

Mark each of the following statements as True (T) or False (F):

- ___ a. The citing officer bears the burden of proof in an informal hearing.
- ___ b. A verbatim record must be kept of every informal hearing.
- ___ c. A preponderance of the evidence is needed to find a defendant responsible for a civil infraction.
- ___ d. A defendant may have an attorney, and the plaintiff may have a prosecutor present at an informal hearing.
- ___ e. A district court magistrate may conduct an informal hearing.
- ___ f. An appeal from an informal hearing is taken to the circuit court.
- ___ g. A defendant is not entitled to a jury in an informal hearing.
- ___ h. A defendant found responsible for a civil traffic infraction may be required to pay a civil fine.
- ___ i. The sanctions for a civil infraction may include up to 30 days confinement in jail.

Question #2

Number the following procedures in the order that it is recommended they be performed.

- ___ a. Magistrate explains to the parties what an informal hearing is.
- ___ b. Magistrate inquires if all parties are ready to proceed.
- ___ c. If the defendant is found responsible, magistrate imposes sanctions.
- ___ d. Magistrate swears in all parties and witnesses.
- ___ e. Magistrate calls the case, and calls in all parties and witnesses.
- ___ f. Defendant gives his or her testimony.
- ___ g. Citing officer gives his or her testimony.
- ___ h. Magistrate announces the court's findings of fact and law.

- ☐ i. Magistrate reads the charge to parties and witnesses.
- ☐ j. Magistrate introduces self to parties and witnesses.
- ☐ k. Plaintiff's witnesses testify.
- ☐ l. Magistrate relates the decision of factual issues to the applicable statutes.
- ☐ m. Magistrate explains to both parties how to appeal the decision.
- ☐ n. Defendant's witnesses testify.

B. Practice Problems

For the following problems, consider yourself the magistrate in the situation and answer the questions appropriately.

Practice Problem #1

You are conducting an informal hearing while your judge observes. You called the case, asked all the parties and witnesses to come forward, and found that all were correctly identified. After calling the case, you next explained the informal hearing process and, in response to a question by the defendant, you also explained the difference between a formal and an informal hearing. You next asked the parties if they were ready to proceed and then asked the citing officer to testify. At this point the judge asked you to stop. Did you follow proper procedure so far?

Check one answer:

☐ Yes ☐ No

Explain your answer:

Practice Problem #2

Your final hearing of the day involves a defendant cited for traveling 44 miles per hour in a 25 mile per hour zone. The defendant testified that she was speeding but did so because she was just served with divorce papers at work and was returning home to protect the children from her husband.

How would you decide this case?

4.9 Answer Key

A. Answers to Questions

Answers to Question #1

- T a. The complaining party bears the burden of proof in any lawsuit, civil or criminal.
- F b. A verbatim record is not required. MCL 257.746(1).
- T c. MCL 257.746(4).
- F d. Neither side may be represented by counsel in an informal hearing. MCL 257.746(2).
- T e. MCL 257.746(1).
- F f. Except when a hearing is conducted by a municipal judge, the result of an informal hearing is appealed to a district judge who schedules a formal hearing. MCL 257.746(5).
- T g. There is no jury in either an informal or formal hearing. MCL 257.746(1), 257.747(4).
- T h. MCL 257.907(2).
- F i. Sanctions for civil infractions include only civil fines, costs and treatment or rehabilitation programs. MCL 257.907.

Answers to Question #2

- | | | |
|--------------|--------------|--------------|
| a. <u>3</u> | f. <u>9</u> | k. <u>8</u> |
| b. <u>5</u> | g. <u>7</u> | l. <u>11</u> |
| c. <u>13</u> | h. <u>12</u> | m. <u>14</u> |
| d. <u>6</u> | i. <u>4</u> | n. <u>10</u> |
| e. <u>1</u> | j. <u>2</u> | |

B. Solutions to Practice Problems

Solution to Practice Problem #1

Answer: No

Explanation: You made two errors. First, you did not read the charge as it appears on the citation and make sure the defendant understood it. Second, you did not swear in all the parties, as a group, before taking their testimony. You must correct both of these errors before taking testimony.

Solution to Practice Problem #2

Explanation: When the defendant admitted she violated the speed limit, the proceeding in effect became an admission of responsibility with explanation. The defendant's explanation, if true, provokes a degree of sympathy. However, to be found not responsible, she has to prove her speed was in response to a sudden emergency.* The defendant must establish at least some reasonable basis for her fear that her husband would batter or abduct the children and that no other course of action, such as calling the police from her office, would have been feasible. It is unlikely that she can do so. Still, the defendant could have been emotionally upset during the time she drove home. You may consider suspending part of the fine and costs to reflect this mitigating factor. You cannot reduce the number of points assessed against her, except by finding her responsible for driving at some speed less than 44 miles per hour. However, this practice of negotiating "miles over" with the defendant and citing officer should be approved in advance by your district judge. It is not favored by district court magistrates who responded to a recent Michigan Judicial Institute survey on speeding citations.

*See Section 5.2(C) on the doctrine of sudden emergency.

Before you go to the next unit, turn to the first section of this unit and review the instructions. Make sure you have completed each step before moving on to Unit 5.